IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

PETN, UNDER ARBITRATION ACT. No 57 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARUN CONSTRUCTION CO.

Versus

G.S.C.C. LTD.

Appearance:

MR HK PARMAR for Petitioner

MR KG SUKHWANI for Respondent No. 1

MR GC MAZMUDAR for Respondent No. 2, 3

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 24/03/2000

ORAL JUDGEMENT

1. Heard Shri H.K. Parmar for the petitioner, Shri K.G. Sukhwani for respondent No.1-Gujarat State Construction Corporation Limited, and Shri G.C. Mazmudar for Respondent Nos. 2, 3, representing the Sardar Sarovar Narmada Nigam Limited.

2. This Application has been filed, invoking the Arbitration Clause (13) in the Agreement inter se entered into between the petitioner Messrs. Arun Construction Company and respondent No.1-Gujart State Construction Corporation Limited for carrying out the works contract for erection of tube gates to the power house of the Corporation. According to the petitioner, despite notice for reference of dispute, the respondent-Corporation has
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arbitration clause (13) in the Agreement dated 18th October, 1989, reads as under :-

> "... (13) Disputes if any, arising out of this agreement shall be referred to a mutually agreed arbitrator and pending resolving of such disputes through Arbitration, work shall be carried out by secondary contractor as per interim decision given by the leader contractor .... "

3. On behalf of respondent No.1-Gujarat State Construction Corporation Limited, learned counsel raised an objection that the jurisdiction in the subject matter of d.....

under the Gujarat Public Works Contracts Disputes Arbitration Tribunal Act of 1992. In support of the objection on jurisdiction raised by the respondent No.1-Corporation, attention of the Court is invited to the definition of "Works Contract", contained in clause (k) of Section 2 of the State Act of 1992. The definition clause (k) of "works contract" reads as under :-

> " 2.(1) ... ...
>
> (k) "Works Contract" means a contract made by the State Government or the public undertaking with any other person for the execution of any of its works relating to construction, repairs or maintenance of any building or superstructure, dam, weir, canal, reservoir, tank, lake, road, well, bridge, culvert, factory or work shop or of such

other work of the State Government or, as the case may be, of the public undertaking, as the State Government may, by notification in the Official Gazette specify, and includes -

(i) A contract made for the supply of goods relating to the execution of any of such works,

(ii) a contract made by the Central Store Purchase Organization of the State Government for purchase or sale of goods.

(2) Words and expressions used and not defined in this Act but defined in the Arbitration Act, shall have the meanings assigned to them in the Arbitration Act .... "

4. In reply to the objection on jurisdiction, the learned counsel for the petitioner, under the directions of this Court, has kept present one of its Engineers to explain the nature of work awarded to the petitioner-Company by the respondent No.1-Corporation. It is pointed out by the Engineer present, with the assistance of the counsel appearing, that the work awarded was "providing gates for the channel from the Dam for controlling water to the power plant of the Corporation". It is, thus, clear that the contract awarded to the petitioner-Company was for the power house of the respondent No.1-Corporation. As per the definition clause of "works contract", since the award to the petitioner-Company is in relation to the Corporation, which is a "Public Undertaking", as defined under clause (i) of Section 2(1) of the Act and as the said work of the public undertaking has not been notified in the Official Gazette, the Arbitration Tribunal can claim no jurisdiction in the subject matter of the dispute.

5. The objection based on the plea of alleged exclusive jurisdiction with the Arbitration Tribunal, therefore, has no merit and the same is rejected.

6. Learned counsel appearing for respondents Nos. 2 and 3 (i.e., Sardar Sarovar Narmada Nigam Limited and the Executive Engineer of the Narmada Project Power House Mechanical Division), submits that the Nigam and the Executive Engineer being not parties to the agreement

dated 18th October, 1989, no reference of dispute can be made so far as respondent Nos. 2 and 3 are concerned.

7. I have been taken through the contents of the Agreement dated 18th October, 1989, which has been entered into only between the petitioner-Company and the respondent No.1-Gujarat State Construction Corporation Limited. The existence of a separate contract between the Sardar Sarovar Narmada Nigam Limited and the Gujarat State Construction Corporation Limited, is no ground to make the respondent No.2-Nigam a party to this application for making a reference of the dispute to Arbitration. The learned counsel for respondent Nos. 2 and 3 is right in submitting that they could not have been arrayed as parties to this application. The objection raised on behalf of respondent Nos. 2 and 3 is sustained and they are discharged from the case.

8. Now remains the question of making reference of dispute to the Sole Arbitrator in terms of Clause (13) of the Agreement. With the consent of the petitioner and respondent No.1, Shri P.M. Chauhan (a Retired Judge of this Court) is appointed as the Sole Arbitrator to adjudicate upon the dispute between the parties arising under the Agreement dated 18th October, 1989. It is directed that the mutually agreed Arbitrator shall enter upon the arbitration and shall make a reasoned Award. The parties are at liberty to raise all their claims and contentions before the agreed Arbitrator.

The petition stands disposed of accordingly.

24th March, 2000 (D.M. Dharmadhikari, C.J.)

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(apj)